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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
DEPENDENT TERRITORIES*

[31 March 1993]

* The present document contains supplementary information submitted by the Government of the United Kingdom in respect of its dependent territories. The report of the United Kingdom's Dependent Territories (CAT/C/9/Add.10) was considered by the Committee against Torture on 18 November 1992 during its ninth session (see CAT/C/SR.132, 133 and 133/Add.2).

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Supplementary Material submitted by the United Kingdom of Great Britain and Northern Ireland in respect of its Dependent Territories

During the consideration by the Committee against Torture, on 18 November 1992, of the initial report by the United Kingdom in respect of its dependent territories (CAT/C/9/Add.10), the representative of the United Kingdom undertook to submit to the Committee, in writing, further information to supplement or confirm or qualify, as the case might be, the information which he had already been able to provide orally in response to certain questions which the Committee had raised (see CAT/C/SR 132, 133 and 133/Add.2).

That further information is now set out below.

A. Segregation of unconvicted and convicted prisoners

(1) Anguilla
There is no provision requiring such segregation.

(2) Montserrat
The Prison Rules require unconvicted prisoners to be confined in such part of the prison as may be set aside for them and, as far as the circumstances allow, to be kept entirely separate from other prisoners. This is achieved in the case of female prisoners but, because of limited facilities, it is not wholly possible in the case of male prisoners. However, it is hoped that when a new prison is built full segregation will be possible in all cases.

(3) Turks and Caicos Islands
There is no provision requiring such segregation.

(4) St. Helena
The Gaol Rules require such segregation to be observed so far as practicable but the size of the prison and its restricted facilities would not permit complete segregation in practice. However, it is very rare for St. Helena to have unconvicted prisoners. When that does happen, they never share cells with convicted prisoners but may, on occasion, share meals.

(5) Pitcairn
There is no provision requiring such segregation but if there ever were a case of an accused person being remanded in custody - this is extremely unlikely:

see the initial written report in respect of Pitcairn (CAT/C/9/Add.10, at pp.30-35, and in particular paragraph 7 at p.35) - he or she would in practice be detained separately from any convicted prisoner.

(6) Cayman Islands
The Prison regulations require such segregation so far as practicable. Unconvicted prisoners are held in dormitory accommodation separate from convicted prisoners but there are insufficient resources to ensure full segregation at all times and the two classes mix during mealtimes and for normal exercise and association.

(7) British Virgin Islands
The Prison Rules require such segregation and this requirement is generally observed. However, there have been occasions, when the prison has been full, when it has been necessary to place unconvicted prisoners together with convicted prisoners. This has been permitted only for as short a period as possible.

(8) Gibraltar
The Prison Ordinance does require such segregation so far as accommodation in the prison renders it practicable. This requirement is generally observed but shortage of accommodation sometimes prevents full compliance with it.

(9) Falkland Islands
The Prison Ordinance does require such segregation so far as accommodation in the prison renders it practicable. But it is in fact very unusual in the Falkland Islands for accused persons to be held in custody pending trial.

B. Possibility of civil proceedings against the Government in respect of wrongs committed by officials

(1) Anguilla
It is confirmed that Anguilla has a Crown Proceedings Ordinance.

(2) Montserrat
It is confirmed that Montserrat has a Crown Proceedings Ordinance.

(3) Turks and Caicos Islands
It is confirmed that the Turks and Caicos Islands have a Crown Proceedings Ordinance.

(4) St. Helena
Until recently it was believed that the Crown

Proceedings Act 1947 of the United Kingdom had effect automatically as part of the law of St. Helena. However, the Supreme Court ruled last year that this was not so. A draft Crown Proceedings Ordinance, on the same lines as the Act, has accordingly now been prepared and it is hoped that it will be enacted at the next session of the Legislative Council. In the meantime the Executive Council has instructed the Attorney General to deal with all claims on an ex gratia basis as if the Act applied.

(5) Pitcairn
The Crown Proceedings Act of 1947 of the United Kingdom has effect as part of the law of Pitcairn.

(6) Cayman Islands
It is confirmed that the Cayman Islands have a Crown Proceedings Law.

(7) British Virgin Islands
It is confirmed that the British Virgin Islands has a Crown Proceedings Act.

(8) Gibraltar
It is confirmed that Gibraltar has a Crown Proceedings Ordinance.

(9) Falkland Islands
The crown Proceedings Act 1947 has by local law been applied to the Falkland Islands with such modifications as to enable the Falkland Islands Government and any of its officials or any employee of the Government acting in his official capacity to be sued in the Falkland Islands' Courts in every case in which a private individual could be sued.

C. Criminal Injuries Compensation Schemes

(1) Anguilla
There is no such scheme.

(2) Montserrat
There is no such scheme.

(3) Turks and Caicos Islands
There is no such scheme.

(4) St. Helena
There is no such scheme but the Annual Estimates (ie the provision made each year for Government expenditure in the following year) include a "General Compensation" head under which ex gratia payments may be made in appropriate circumstances.

(5) Pitcairn
There is no such scheme.

(6) Cayman Islands
There is no such scheme.

(7) British Virgin Islands
There is no such scheme.

(8) Gibraltar
There is no such scheme having general application. However there is special provision for the payment of compensation out of public funds to a person (or to his widow or children) who has been injured or killed in the course of trying to effect the arrest of another person who is charged with an indictable offence (ie an offence triable by the Supreme Court.)

(9) Falkland Island Islands
There is no such scheme.

D. Incidence of cases of torture: extradition of alleged torturers

It is confirmed that there have been no cases in any of the territories, since the Convention came into force in respect of them, in which a person has been convicted of the offence of torture or of an offence which could have been charged as torture or in which a person has been extradited (or his extradition has been sought) for the offence of torture.

E. Criminal Legal Aid

(1) Anguilla
There is no statute-based or other formal scheme for legal aid in criminal cases. But legal aid is in practice made available in very serious cases, eg murder, in the form of legal representation for the accused,

(2) Montserrat
There is no statute-based or other formal scheme for legal aid in criminal cases. But if an accused person before the High Court is unrepresented because of his lack of means, the Judge will appoint a lawyer to defend him. The lawyer's fees will be paid out of the funds of the Government Legal Department.

(3) Turks and Caicos Islands
There is no statute-based scheme for legal aid in criminal cases. But there are non-statutory arrangements, applicable only to cases involving a charge of murder, under which an accused person who would otherwise be unrepresented is afforded the services of a practising attorney-at-law both in the trial court (the Supreme Court) and on appeal to the Court of Appeal.

(4) St. Helena

The Attorney General is the only qualified lawyer in St. Helena and there is therfore no scope for a full legal aid scheme. But advice and representation is provided by formally recognised lay advocates in accordance with the provisions of the Lay Advocates and Legal Assistance Ordinance 1986 and advice can also be sought from the Legal and Lands Department which provides legal services to the public (at no charge) as well as to the Government. In appropriate cases the Legal Assistance Fund may be used to pay for the advice of a United Kingdom lawyer. In the most serious criminal case to have occurred in St. Helena in recent years (which involved foreign nationals) funds were made available by the United Kingdom Government to pay for full representation by English lawyers, including representation in proceedings before the Court of Appeal.

(5) Pitcairn

There is no statute-based or other formal scheme. But if a person who was charged with a serious criminal offence lacked the necessary means, public funds would be made available to ensure that he was represented by competent and experienced counsel (who would of course have to come from outside Pitcairn.)

(6) Cayman Islands

The Poor Persons (Legal Aid) Law (1975) makes provision for a person who is charged with a serious crime to have the services of a legal practitioner to advise or represent him if he satisfies the court that he does not have the means to instruct a practitioner himself.

(7) British Virgin Islands

There is no statute-based or other formal scheme. But before capital punishment was abolished it was the practice, in cases where the accused was charged with a capital offence and was unrepresented, for the Judge to require that a lawyer be made available to him. This was done at public expense.

(8) Gibraltar

Under the Legal Aid and Assistance Ordinance free legal aid (eligibility for which is means-related) is provided by local barristers and solicitors in the following cases: where as person is committed for trial for an indictable offence (ie trial by the Supreme Court), and on appeal to the Court of Appeal in such a case; and where a person faces summary trial for an offence for which a sentence of imprisonment may be imposed, and on appeal to the Supreme Court in such a case.

(9) Falkland Islands

There is no statute-based scheme but there is a comprehensive non-statutory scheme. Under the current arrangements - the scheme runs from one financial year to the next - legal aid is available to cover the cost of legal practitioners undertaking work on behalf of clients in a range of legal proceedings. These include all criminal proceedings other than for road traffic offences. This assistance (eligibility for which is means-related)is available to all residents of the Falkland Island. Any other person present in the Falkland Islands may be granted assistance under the scheme if the criminal court certifies that he needs legal representation, advice or assistance and that his means are such that he cannot reasonably be expected to finance his own legal costs.

F. Police Complaints Procedure

(1) Anguilla

There are no formal arrangements, statutory or otherwise, for dealing with complaints by members of the public against the police. But any such complaint would of course be properly investigated. If the investigation revealed misconduct by a police officer, then, depending on the facts, consideration would be given to the institution of criminal proceedings or the case would be handled as a disciplinary matter within the police force.

(2) Montserrat

There is no statutory provision on this matter but there is a set procedure within the Montserrat police force for dealing with such complaints. This procedure is as follows:-

(a) When a complaint against a police officer is received from a member of the public, the Deputy Commissioner of Police must initiate an investigation by another police officer, of the rank of Inspector or above.

(b) The investigating officer must then obtain a statement from the complainant and carry out a full investigation. This will include taking statements from witnesses, after which the police officer who is the subject of the complaint will himself be interviewed about it.

(c) The investigating officer must then submit a completed file, with his recommendations, to the Deputy Commissioner of Police.

(d) If the file discloses a possible criminal offence

or indicates that the police officer who is the subject of the complaint may have committed a disciplinary offence which might lead to his dismissal or suspension from duty, the file will be submitted to the Attorney General for advice.

(e) If the Attorney General decides to charge the police officer concerned with a criminal offence, the case will then be pursued before the ordinary criminal courts.

(f) If the decision is to institute disciplinary proceedings, these will be pursued in accordance with the Police Ordinance.

(g) The Commissioner of Police himself must see and finalise the file in every case.

(h) The complainant must be notified of the result of the investigation into his complaint.

(i) A record must be kept of all complaints against the police.

(3) Turks and Caicos Islands

There is no statutory provision on this matter but the Turks and Caicos Islands Police Standing Orders prescrib the procedure to be observed in dealing with complaints by a member of the public against a police officer. This procedure is as follows:

(a) Any written letter of complaint must at once be referred to the Deputy Commissioner. If it is received elsewhere than at Police Headquarters, it must at once be sent there by hand for his attention. The Deputy Commissioner will then order the necessary further action, record the complaint in the Complaints Register and send a written acknowledgment to the complainant.

(b) If a complaint is made otherwise than in writing (eg personally at a police station), it must be dealt with by an officer of the rank of Inspector or above. He will then invite the compainant to make a written statement on a proper statement form. He will also take any necessary immediate action (eg to procure a medical examination or to prevent the complaint being aggravated.) He will then forward the statement, together with any comments of his own, to the Assistant Superintendent of the Division who in turn will refer the case to the Deputy Commissioner.

(c) For the purpose of investigating a complaint, the Deputy Commissioner is required to appoint an officer of the rank of Inspector or above. This investigating officer will follow the same general procedures as in a criminal case. Written statements on statement forms will be taken from all potential witnesses. Any material documents will be taken into the investigating officer's custody as potential exhibits in the proceedings which may follow.

(d) When all witness statements have been taken, the officer who is the subject of the complaint will himself be interviewed. This must be done in the presence of a sergeant who will make a note of the interview. If the complaint involves an allegation of a criminal offence, the proper procedure for handling such an interview (eg the giving of a caution in accordance with the Judges' Rules) must be observed; in other cases it will be the procedure for handling disciplinary matters. If the complaint is against more than one officer, they must each be interviewed separately and all necessary steps taken to prevent collusion. If the interview indicates the existence of further witnesses, statements will then be taken from them also.

(e) When all enquiries are complete, the investigating officer must submit to the Assistant Superintendent the statements, any exhibits and his own report and recommendations. After consultation with the Deputy Commissioner, the Assistant Superintendent will then initiate action as follows:

(i) If no misconduct has been revealed, the papers will be forwarded to the Deputy Commissioner for registration and reply to the complainant.

(ii) If the investigation has revealed a possible disciplinary offence but not a criminal offence, the papers will be forwarded to the Deputy Commissioner for his decision whether disciplinary proceedings should be taken and, if so, whether the case should be heard by the Commissioner himself or by a Superintendent.

(iii) If the investigation has revealed a possible criminal offence, the papers will be forwarded to the Deputy Commissioner for him to submit them to the Attorney General. If the

Attorney General advises that criminal proceedings should be instituted, they will be then be pursued before the ordinary criminal courts.

(f) If, in a case which is being handled as described in paragraph (e)(ii) or paragraph (e)(iii) above, there is substantial delay in finalising it, the Deputy Commissioner is required to keep the complainant advised of its progress. The complainant will also be advised, in writing, of the final outcome.

(4) St. Helena

There is no statutory provision on this matter. But police affairs are a special responsibility of the Governor. If a complaint is made against the police, the Governor may appoint a Commission of Enquiry to investigate the matter and advise him. This has been done in the past. A complainant who is dissatisfied with the Governor's decision may petition the Secretary of State for Foreign and Commonwealth Affairs (ie the responsible United Kingdom Minister).

(5) Pitcairn

Given the circumstances of Pitcairn, there is no need (and no scope) for any formal arrangements on this matter. But if there ever were to be any complaint of any kind against a police officer, it would of course be properly investigated.

(6) Cayman Islands

There is no statutory provision on this matter, but the Committee's attention is drawn to paragraph 32 of the initial written report in respect of the Cayman Islands (CAT/C/9/Add.10, at p.44). Where the investigation of a complaint revealed misconduct by a police officer, the matter would be pursued, as appropriate, either by way of criminal proceedings or as a disciplinary matter within the police force.

(7) British Virgin Islands

There are no statutory or other formal arrangements on this matter. But any complaint by a member of the public against the police would of course be properly investigated. The investigation would be conducted by a police officer and, unless it led to criminal procedings being instituted, any misconduct by a police offeicer which it revealed would be dealt with as a disciplinary matter within the police force.

(8) Gibraltar

As explained in the initial written report in respect of Gibraltar (CAT/C/9/Add.10, paragraph 29 at p.57), a complaint by a member of the public against the police

is subject to investigation by the Police Complaints Board. This Board is established under the Police (Discipline) Regulations 1991 and consists of the Commissioner, two other police officers not below the rank of Chief Inspector and two independent members appointed by the Governor, together with a Secretary who is also appointed by the Governor. Where an investigation reveals conduct by a police officer which may amount to a disciplinary or criminal offence, the matter is referred to the Commissioner or the Attorney General, as the case may require, for the institution of disciplinary or criminal proceedings to be considered. The Regulations require the complainant, as well as the police officer who is the subject of the complaint, to be kept duly informed.

(9) Falkland Islands

Under the provisions of the Police Ordinance 1967, complaints against members of the police force are to be investigated without delay by the Chief Police Officer. In practice the Chief Police Officer submits the results of his investigation to the Police Advisory Committee, which is an independent committee whose members are appointed by the Governor.

G. Judicial corporal punishment

As reported orally to the Committee at the hearing on 18 November 1992, corporal punishment may be imposed by order of a court, on conviction of a criminal offence, only in the territories and in the circumstances indicated below. As will be seen, in most of the cases in question, though the enabling provision remains on the statute-book, it is not currently implemented in practice. The respective details, as requested by the Committee and so far as applicable in practice, are as follows:-

(1) Anguilla

A sentence of flogging (ie with a "cat o' nine tails") or whipping (ie with a cane) may be passed on an adult for any of the following offences: defilement of a girl under 12 years of age; robbery; demanding money, etc. with menaces; shooting or wounding with intent; attempting to choke in order to commit any offence; causing bodily injury by an explosive substance; causing explosive substance to explode or sending an explosive substance to any person; rape.

A sentence of whipping (only) may be passed on a juvenile for any offence.

The only recent exercise by a court of the power to order corporal punishment occurred in April 1992 when four boys (two aged 12 years, one aged 10 years and one aged 8 years) were found guilty of stealing a sum

of money from a person. The magistrate orderd all four boys to observe a curfew (to be home by 7.00 pm.) for one year, one boy also to be put on probation for two years and all four boys also to receive four strokes of the cane.

(2) Turks and Caicos Islands

There is a provision in the Young Offenders Punishment Ordinance (which was enacted in 1909 and is still in force) which authorises male offenders up to the age of 16 years to be sentenced to be whipped if convicted of an offence punishable with imprisonment. However - and this represents a correction of the information given orally to the Committee at the hearing on 18 November 1993 - this provision, though it has not been repealed, is regarded as an anomalous relic and the power which it confers is not, in practice, currently in use.

(3) Cayman Islands

As reported at the hearing on 18 November 1993, though the law of the Cayman Islands theoretically permits a convicted prisoner to be sentenced, by a court, to corporal punishment for certain offences against prison discipline, this power has not in practice been exercised in recent years and is effectively in abeyance.

(4) British Virgin Islands

A sentence of flogging or whipping may, in law, be passed on an adult prisoner for the following prison offences: mutiny; incitement to mutiny; gross personal violence to a prison officer.

A sentence of whipping may be passed on a juvenile for any offence.

In practice, however, no person in the British Virgin Islands has been sentenced by a court to corporal punishment of any kind since 1985.